

application, the applicant must only bid on the licenses identified and pay an up-front payment.

(3) Up-front Payments And Bidding Units. The applicant should pay an up-front payment for each license it has identified in its Form 175 application. For the top 10 markets, the up-front payment should be \$10,000 for each license. For markets 11 through 51, the up-front payment should be \$5,000 for each license. Because an applicant would have specifically identified each license it intends to bid on and would have paid a specific up-front payment for each license, the application of bidding units to determine eligibility for bidding is unnecessary.

(4) The Auction For Each License Should Close Individually. A license should stay open for all applicants identifying the license on the Form 175 application and making the appropriate up-front payment as long as there is bidding activity on the license. However, in order to assure continuing high quality service to the public, the auction for each license should close individually. The trigger for closure should be the passing of two rounds in which no new bid is placed on the license. Upon the passing of the two rounds without a new bid, the high bidder is the winner of the license.⁵⁴ Using this simple rule makes activity rules unnecessary.

(5) Timing Of The Down Payment And Applications For Permanent Authority. On the same day of each week after the

⁵⁴ We have chosen the process of two rounds instead of one in order to allow bidders a last chance at each license.

auction has commenced, the Commission should issue a public notice of licenses for which the bidding has closed. This public notice would be the trigger for a five business day window in which the winning bidder was required to submit its down payment for the license. The public notice would also be the trigger for a 15 business day window for the filing of the application for permanent authority by the winning bidder. Once the application for permanent authority is granted, the applicant should have 45 days to submit the remainder of its payment for the license.

(6) Designated Entity Provisions. The paging market consists of over 600 existing carriers, with no significant economic or regulatory barriers to entry. It would, therefore, be inappropriate for the Commission to adopt Designated Entity ("DE") or small business provisions such as bidding credits and installment payments for the paging auction. Allowing such credits adds fuel to the application mill's ability to "sell" chances to participate in the auction process, but serves no necessary purpose related to small participant entry in the MTA auctions. Furthermore, the Commission will find that there is very little paging spectrum left and, as such, the Commission would merely be creating artificial incentives to bid. This would allow "DEs" to artificially bid up the price of spectrum that an incumbent must have to continue to expand its system and, thus, would be unfair in the context of the paging auctions.

(7) Minimum Bids And Rounds. There should be no minimum bids for the first round. After the first round, the minimum bid should be a ten percent increment of the high bid for the

license. For the first few rounds, PageNet suggests that the Commission conduct one round a day. However, if there is strong sentiment among the commentators for rounds every other day, PageNet would support rounds on Monday, Wednesday and Friday for the first few weeks. After these initial rounds, the Commission should implement one round per day and assess whether more than one round per day would be more appropriate for the remaining licenses.

The elements identified above will allow both small and large paging carriers to participate in the auction. Because each license will close individually, the auction process will be faster. The fact that the Commission will not have to process over 8000 applications for permanent authority at the same time means that the Commission's administrative resources will not be overtaxed. Ultimately, what this proposed auction process will produce is a more rapid deployment of geographic licenses and swift return of full paging service to the public.

XIV. The Ability To Continue To Serve The Public By Secondary Site Licensing Should Extend Through The Auction Or, Alternatively, Blanket Conditional Operation Authority Should Be Granted To The Auction Winners During The Pendency Of Their Applications For Permanent Authority

A. Secondary Site Licensing Should Extend Through The Auction Process

If the other auctions held by the Commission are any indication, the paging auction could last for extended periods. During the auction, and the further period that it will take to process the applications for permanent authority, carriers will be unable to modify their systems to meet subscriber demand in

new areas or, in some cases, to enhance depth of service in current service areas if the Commission ends permissible secondary licensing. With 34 million existing subscribers, the time from when the auction begins to the time the applications for permanent authority are granted will be difficult because paging carriers, even if they intend on winning the appropriate geographic license at auction, will not be able to fully serve the needs of subscribers while other services, such as broadband, are able to provide paging service without restriction. To mitigate the impact of the length of the auction and the petition to deny process, the Commission should extend the ability to license transmitting sites on a secondary basis through the auction and up until the moment when the permanent authorization are granted.

In effect, this proposal will call for the Commission to allow for secondary licensing in three phases. The first phase is the secondary licensing that will occur during the freeze. PageNet has proposed limiting this licensing to incumbents that already have an operating system on the channel within the geographic license area. If applications for secondary sites are pending as of the date of the auction and the applicants for the secondary authorization are not applicants for the specific license and geographic area in which the secondary site is sought, their secondary site application should be dismissed.

The second phase of secondary licensing will begin the day of the auction and only be available to applicants in the auction for the specific channel in the specific geographic area in which

the secondary site license is sought. Once an auction closes, unless the applications belong to the winning bidder, all pending applications for secondary sites should be dismissed.

The third phase of secondary licensing will begin the day the license specific auction closes and will only be available to the auction winner. Because no other applications could compete against applications filed by the auction winner, at this stage, the applications for secondary sites by the winning bidder should not be placed on public notice. Once the application for permanent authority is granted, all of the secondary sites authorized to the geographic licensee would be part of the geographic system and enjoy primary status. At that time, all pending applications for secondary sites could be dismissed as moot.

B. In The Alternative, The Commission Should Give Winning Bidders Blanket Conditional Operating Authority During The Pendency Of Their Applications For Permanent Authority

In the event that the Commission determines not to allow incumbent paging carriers to file applications for secondary site licensing through the auction, the Commission should alternatively authorize the winning bidders to conduct conditional operations during the pendency of their application for permanent authority. In the *Third CMRS Order*,⁵⁵ the

⁵⁵ *Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services*, Third Report and Order, 9 FCC Rcd 7988, ¶383 (1994) ("Third CMRS Order").

Commission determined that it would provide for special temporary authority for CMRS operators pursuant to section 309(f) of the Act in cases where "extraordinary circumstances" could be demonstrated under that provision. PageNet submits that institution of the freeze on new applications for paging channels in this proceeding, combined with the on-going and pressing need to build-out and improve paging systems to meet customer demand for both service in new areas and greater depth of service and reliability, gives rise to an "extraordinary circumstance" within the meaning of the Act.

In *JAJ Cellular v. F.C.C.*,⁵⁶ the Court of Appeals affirmed the Commission's exercise of its regulatory authority to extend interim authority to an incumbent cellular operator whose build out of a Metropolitan Statistical Area ("MSA") was subjected to challenge by competitive applicants to provide service in "fill-in" areas of the geographic license. The Commission had rescinded the incumbent licensee's permanent authorization for the "fill-in" areas pending processing of the competing applications, but did award the incumbent interim authority to continue to provide services in the disputed areas pending an award of permanent authority.

In upholding the Commission's grant of the interim authorization, the Court held that the Commission had properly

⁵⁶ 54 F.3d 834 (D.C.Cir. May 1995).

interpreted its own authority under Section 22.32(g) of the Commission's Rules⁵⁷ The Court held:

If the Commission expressly finds there is an immediate public interest need for uninterrupted service, adequately considers the alternatives, fairly weighs the prejudice that may result to competing applicants, and adequately explains its reasoning, it may grant interim authority to an ousted incumbent under § 22.32(g) pending the award of permanent authority. The Commission may even proceed to do so without a hearing, because § 22.32(g) authorizes the grant of interim authority when 'the public interest requires prompt establishment of radio services in a particular community or area.'⁵⁸

JAJ Cellular and *LaStar Cellular* follow in a line of decisions tracing back to *Ashbacker Radio Corp. v. F.C.C.*,⁵⁹ which have defined the authority of the Commission under section 309 of the Act to grant interim operating authority to one of two or more competing mutually exclusive applicants for a license pending award of the permanent authorization. In these decisions, the courts have defined a range of discretion for the Commission to award interim authorization where it has explicitly balanced the public interest in the immediate issuance of a license against the potential harm to fair consideration of a competing application. Of particular concern in this regard is

⁵⁷ Old Section 22.32(g) of the Commission's Rules provided for conditional operation expressly conditioned upon final action on applications. Section 22.32 was replaced by Section 22.132 of the Commission's Rules. New Section 22.132(c) of the Commission's Rules also provides for conditional operation. 47 C.F.R. § 22.132(c).

⁵⁸ 77 RR 2d at 1261. *Accord LaStar Cellular Telephone Co. v. F.C.C.*, 899 F.2d 1233 (D.C.Cir. 1990).

⁵⁹ 66 S.Ct. 148 (1945).

the potential prejudice to an impartial assessment of the merits of competing applications which allowing one competitor to make a significant investment in facilities might engender.⁶⁰ Where withholding of interim authority would result in an interruption of existing services, or where an investment in licensed infrastructure has, for a variety of reasons, already been made, the courts have weighed these competing interests in favor of allowing service to be provided on an interim basis.⁶¹

In weighing the public benefits of granting interim authorization to high bidders for geographic licenses, the Commission can take instruction from the Court of Appeals' observation in *MCI Cellular Telephone Co. v. F.C.C.*,⁶² where it noted:

The potential agency bias in favor of applicants whose facilities have already been constructed now seems to be viewed as a less pressing concern for Congress. As we have noted, the Communications Amendments Act of 1982 no longer requires that the FCC issue a construction permit as the first step of a two-step authorization process for common carriers....Congress thus appears to be less concerned about potential agency bias in favor of licensing facilities already built than about administrative inefficiencies and delays..."⁶³

Measured against these standards, the circumstances facing high bidders for geographic paging licenses qualify as

⁶⁰ See *Consolidated Nine, Inc. v. F.C.C.*, 403 F.2d 585, 589-90 (D.C.Cir. 1968); *Community Broadcasting Co. v. F.C.C.*, 274 F.2d 753, 761-63 (D.C.Cir. 1960).

⁶¹ *LaStar Cellular Telephone Co. v. F.C.C.*, 899 F.2d at 1235; *JAJ Cellular v. F.C.C.*, 54 F.3d at 838-40.

⁶² 738 F.2d 1322 (D.C.Cir. 1984).

⁶³ *Id.* at 1331 n. 16.

"extraordinary" within the meaning of section 309(f) of the Act. The freeze imposed by the Commission in this proceeding is the first ordered against new applications for service in a mature industry under the Commission's jurisdiction. As a result, it has interrupted the build-out and enhancement of a vital communications service, and has prevented licensees from refining the level of services they bring to the public. It has created a substantial backlog in service requirements in the paging industry. Moreover, the freeze is working a competitive disadvantage to paging operators within the CMRS industry in that, in contrast to cellular, SMR and PCS providers, CCP and PCP paging must wait for permanent authorization for geographic licenses while these other carriers are generally free to construct their systems and offer paging service.

The situation facing the Commission here is not one in which the marketplace is currently unserved and there are no incumbent licensees. It is one in which high bidders will have been determined the apparent successful competitor for geographic licenses in auctions and will have made substantial monetary deposits with the Commission for such licenses. An "investment" will already have been made by operation of law. Moreover, most successful bidders for geographic paging licenses will be incumbent service offerors who will be seeking to add to and enhance their existing systems. In this regard, the situation at hand is akin to that posed in *JAJ Cellular* and *LaStar Cellular* where the courts upheld the Commission's decision to grant interim licenses in order to avoid an interruption or diminution

of existing service, and where there could be no real prejudice to the comparative hearing process because an investment by the interim licensee in facilities had already been made.

It can fairly be expected that the instant rulemaking and the auctions that are to follow will consume the better part of a year before high bidders for geographic licenses are determined. At that point, the rules will permit competitors to attempt to protract the licensing process further by filing petitions to deny. The extraordinary combination of circumstances presented by the imposition of the freeze and the Commission's transition of the paging industry to a new set of licensing procedures plainly mandates the Commission's exercise of its authority under Section 309(f) of the Act to mitigate the competitive harm to paging operators and speed the deployment of reliable services to the public.

XV. Other Matters

A. The Nationwide CCP Licenses

In the NPRM, the Commission proposed to exclude the three CCP channels (931.8875 MHz, 931.9125 MHz and 931.9375 MHz) from the upcoming geographic licensing process.⁶⁴ Like the PCP nationwide systems constructed as of February 8, 1996, PageNet supports the Commission's decision to exclude the three nationwide CCP channels from the geographic licensing process because these licenses are already geographic in scope.

⁶⁴ NPRM at ¶ 26.

In the NPRM, the Commission noted that Mtel occupies channel 931.4375 MHz on "virtually a nationwide basis."⁶⁵ The Commission stated that Mtel uses 931.4375 MHz for its nationwide paging service, but the channel remains allocated as a local paging channel. This fact distinguishes channel 931.4375 MHz from the other nationwide CCP and PCP channels because, unlike the nationwide CCP and PCP channels, the Commission's Rules do not specifically provide for a nationwide status for channel 929.4375 MHz.⁶⁶ PageNet opposes the treatment of channel 931.4375 MHz as an exempt nationwide channel because Mtel does not enjoy a nationwide license and, to the best of PageNet's knowledge, the Commission has not considered any other substantially built-out non-nationwide 931 MHz channels for this exempt status. Therefore, unless the Commission is willing to consider other substantially constructed 931 MHz local channels as eligible for a nationwide license, and is willing to award these carriers nationwide licenses, it cannot exempt local channel 931.4375 MHz from the geographic licensing process.

B. Anti-Collusion Rules And Bidding Consortia

PageNet agrees with the Commission that the anti-collusion rules should be applied to the auctions for paging services. One of the problems in an auction where incumbents exist on channels to be auctioned is the question of when it is permissible to have contact with incumbents. This problem is further exacerbated

⁶⁵ *Id.*

⁶⁶ See 47 C.F.R. §§ 22.531(b) and 90.495(a)(3).

because the incumbent may be participating in the auction as part of a consortia in which it is not specifically identified. In order to avoid inadvertent violations of the anti-collusion rules, the Commission should clarify that: (1) the anti-collusion rules only apply among applicants and do not extend to incumbents that are not participating in the auction; and (2) applicants are no longer applicants within the meaning of 1.2105, when they have withdrawn from the auction.

In addition, the Commission should require that all consortia and all applicants make a full ownership disclosure, disclosure of all agreements, and identify if they are an existing incumbent in the market in their Form 175 applications.

XVI. Conclusion

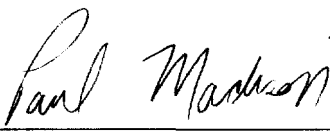
Paging has been a fantastically successful mobile service and it is important that the Commission take measures to ensure that the market is allowed to continue to work unimpeded by artificial or regulatory constraints. To that end, the Commission should adopt a simple methodology for the paging auctions and conduct those auctions as quickly as possible. In addition, the Commission should modify the paging rules in a manner that will allow geographic licensees to ascertain the placement of co-channel facilities by a simple and straight forward standard such as a 70 mile separation. For incumbent licenses, uniform 20 mile service and 50 mile interference contours should be adopted. Paging incumbents should be allowed to permissibly modify their systems if they do not extend their 50 mile interference contours. These measures, along with the

other proposals herein will help the Commission redefine paging system licenses by geographic areas and allow the paging industry to obtain some additional measure of parity in the CMRS marketplace.

WHEREFORE, for the foregoing reasons, PageNet requests the Commission adopt new rules and auction procedures in accordance with the comments and proposals herein presented.

Respectfully submitted,

PAGING NETWORK, INC.

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Stefan M. Lopatkiewicz
Paul G. Madison
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Its Attorneys

March 18, 1996

Exhibit 1

DECLARATION

I, Raymond C. Trott, P.E., declare under penalty of perjury that:

I am president of Trott Communications Group, Inc. ("TCG"), formerly Raymond C. Trott Consulting Engineers, Inc., an independent communications engineering company founded in 1978 and located in Irving, Texas. I am a Registered Professional Engineer in the State of Texas (Reg No. 23457E).

Much of my work over the past 32 years has been in the design of wireless systems for the Land Mobile and Telecommunications Industries. In conjunction with this work, I have prepared, for various clients, FCC applications and engineering exhibits for many radio system licenses.

TCG conducts "real world" propagation predictions utilizing state-of-the-art software models considered as reliable standards in the Land Mobile Industry. Much of this involves the prediction of coverage for one-way and two-way paging systems in the 900 MHz frequency bands. TCG's software is based on the well-known Okumura Hata algorithm with corrections by Davidson of Motorola by the use of graphical methods to extrapolate ranges of frequencies, distance ranges up to 300 km and base antenna heights of from 30 to 1000 meters.

TCG was retained by PageNet, Inc. to prepare and analyze the differences between the formulas specified in Paragraph 52 of the NPRM (WT Docket No. 96-18) and "real world" propagation predictions utilizing well known algorithms.

To conduct the study, several antenna sites were selected at various areas in the U.S. We attempted to select sites with differing terrain environments for comparisons. These sites were selected from TCG's current data base of antenna sites. The specific cities are shown in the title block on the plots.

For the propagation predictions, the ERP was set at 1000 Watts (the maximum power limit below 304 meters per §90.494) and the antenna was assumed to be top mounted on the tower. The received signal level was set at the nominal pager sensitivity value of 5 μ volts (-93 dBm) at 1 meter above ground (belt level). These are typical settings for predicting street level coverage for paging systems.

The attached exhibits show the following contours overlaid on the propagation prediction:

- a - Calculated Service Contour based on the specific formula in ¶52 of the NPRM.
- b - 32 km Service contour (§22.537, Table E-1)
- c - Calculated Interference Contour based on the specific formula in ¶52 of the NPRM.
- d - 80 km Interference Contour (§22.537, Table E-2)

RESULTS

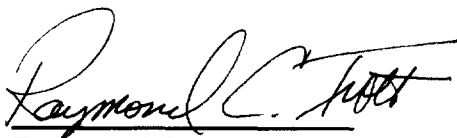
The exhibits show:

1. That the “real world” service area for the plots extend well beyond the service formula of ¶52. In some cases, the “real world” coverage approaches the interference contour based on the Commission’s formula in ¶52.
2. As the attached predictions show, the calculated service contours based on the subject formula cover significantly less than the area covered by the 32 km circle utilized in Table E-1 of §22.537.

CONCLUSION

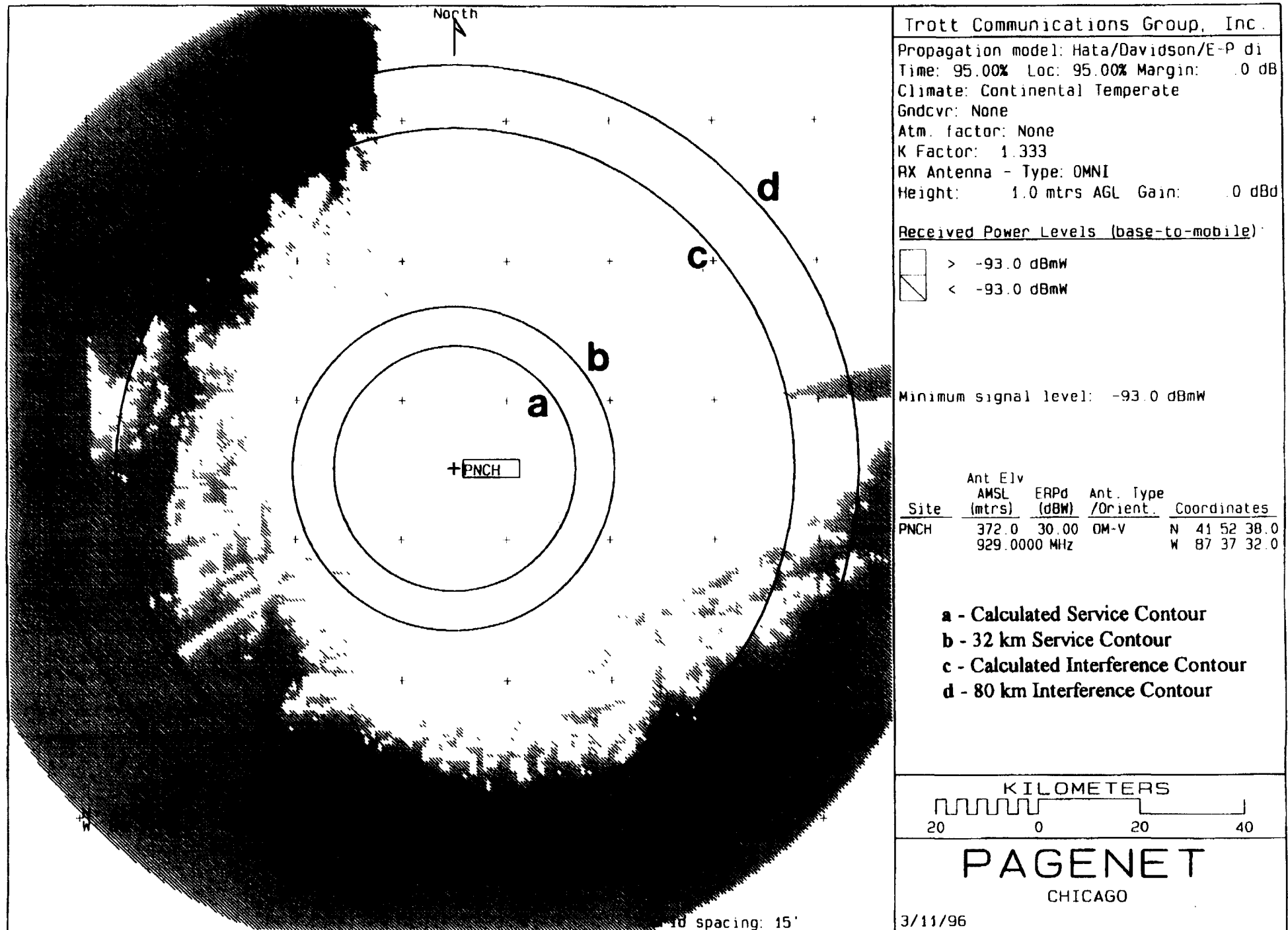
The study shows that the service area calculation specified by the Commission in the subject NPRM does not accurately reflect the actual area of service provided by 900 MHz paging systems and drastically reduces the protection to the authorized station from any co-channel station proposed within the original 70 mile protection afforded the station prior to the NPRM. This reduced protection is exacerbated by the reduction of interference contour by the use of the Commission's interference formula which allows even closer spacing between co-channel stations.

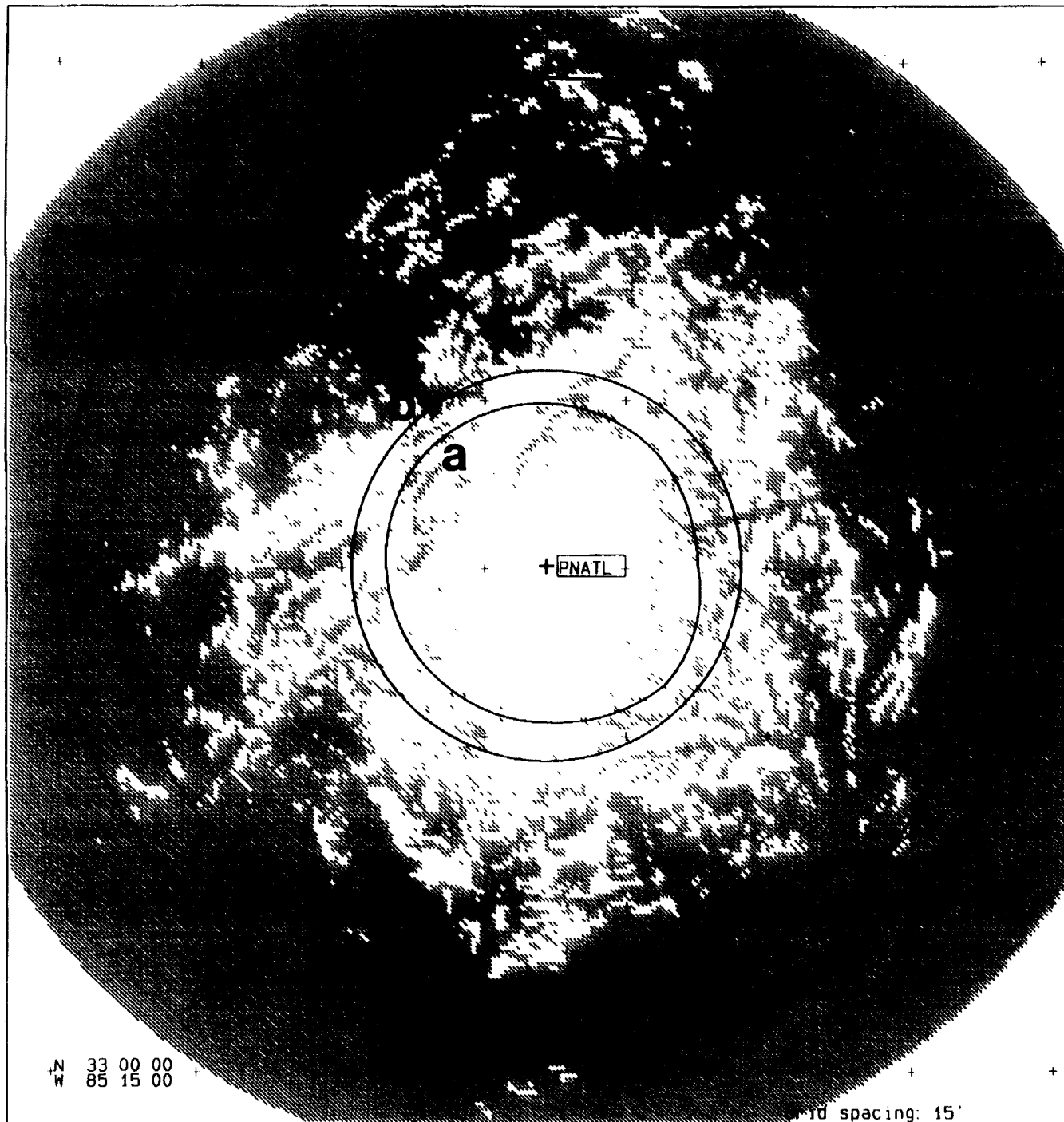
The above statements are true to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "Raymond C. Trott". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Raymond C. Trott, P.E.


March 16, 1996





Trott Communications Group, Inc.
 Propagation model: Hata/Davidson/E-P di
 Time: 95.00% Loc: 95.00% Margin: .0 dB
 Climate: Continental Temperate
 Gndcvt: None
 Atm. factor: None
 K Factor: 1.333
 RX Antenna - Type: OMNI
 Height: 1.0 mtrs AGL Gain: .0 dBd

Received Power Levels (base-to-mobile):


 > -93.0 dBmW
 < -93.0 dBmW

Minimum signal level: -93.0 dBmW

Site	Ant Elv AMSL (mtrs)	ERPd (dBW)	Ant. Type /Orient.	Coordinates
PNATL	494.0 929.0000 MHz	30.00	OM-V	N 33 45 14 0 W 84 23 25 0

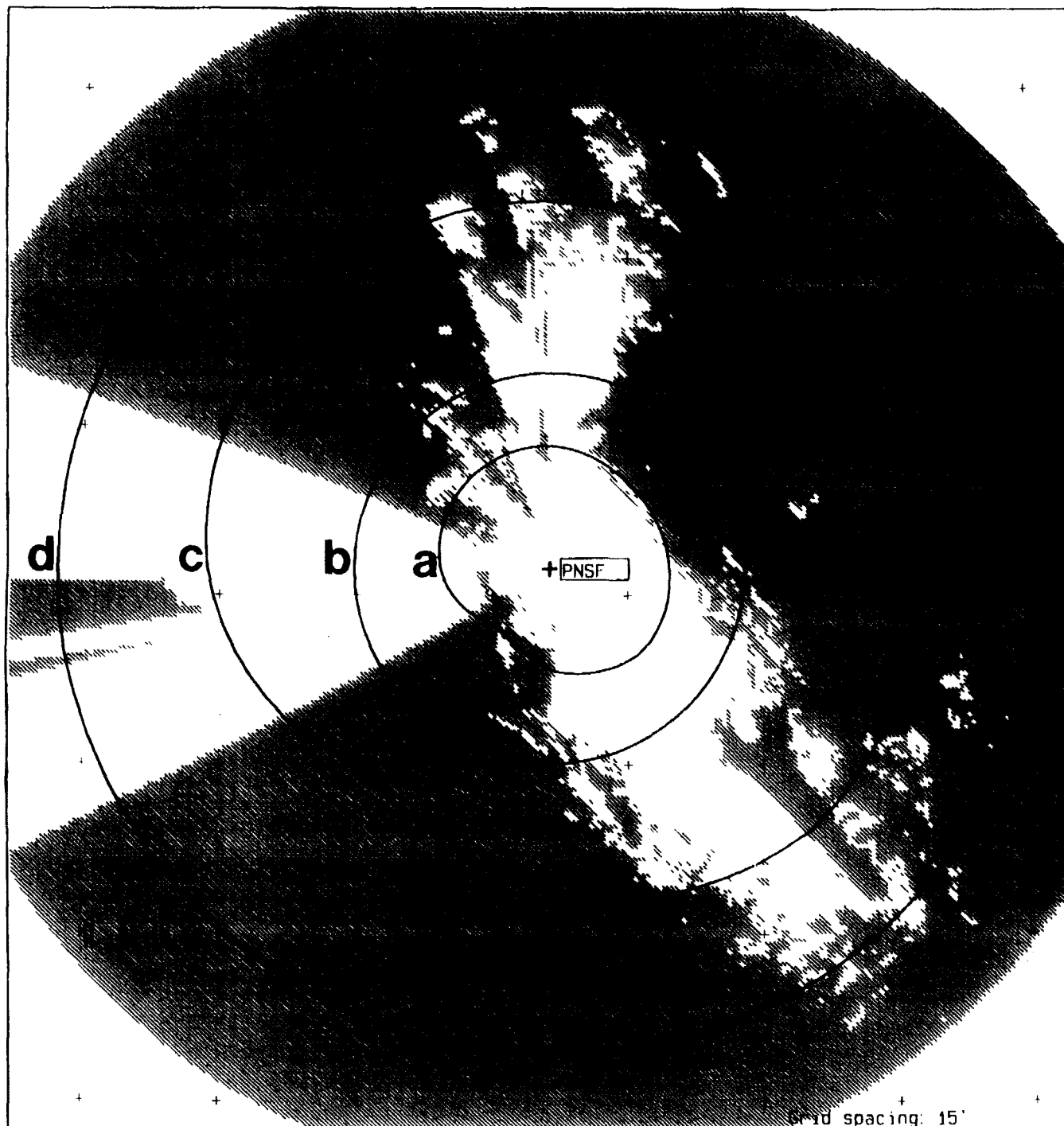
- a** - Calculated Service Contour
- b** - 32 km Service Contour
- c** - Calculated Interference Contour
- d** - 80 km Interference Contour

KILOMETERS

 20 0 20 40

PAGENET
 ATLANTA

3/11/96



Trott Communications Group, Inc.

Propagation model: Hata/Davidson/E-P d1

Time: 95.00% Loc: 95.00% Margin: 0 dB

Climate: Continental Temperate

Gndcvt: None


Atm. factor: None

K Factor: 1.333

RX Antenna - Type: OMNI

Height: 1.0 mtrs AGL Gain: 0 dBd

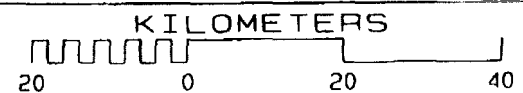
Received Power Levels (base-to-mobile)


 > -93.0 dBmW
 < -93.0 dBmW

Minimum signal level: -93.0 dBmW

Site	Ant. Elv	ERPd (dBW)	Ant. Type /Orient.	Coordinates
	AMSL (mtrs)			
PNSF	162.0	30.00	OM-V	N 37 47 22.0 W 122 23 47.0
	929.0000 MHz			

- a - Calculated Service Contour
- b - 32 km Service Contour
- c - Calculated Interference Contour
- d - 80 km Interference Contour

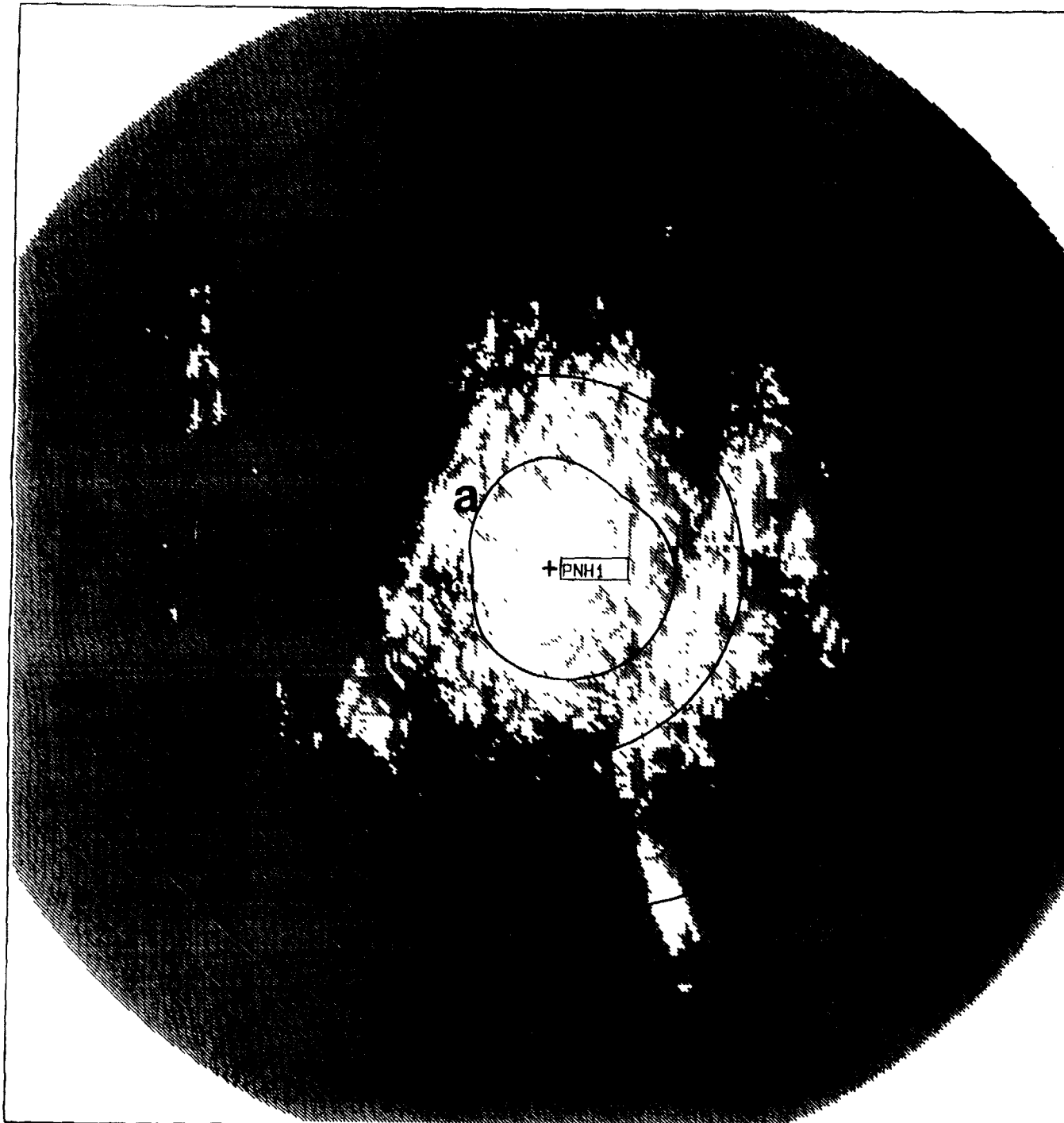


PAGENET



SAN FRANCISCO

3/11/96

Grid spacing: 15'



Trott Communications Group, Inc.
 Propagation model: Hata/Davidson/E-P di
 Time: 95.00% Loc: 95.00% Margin: 0 dB
 Climate: Continental Temperate
 Gndcvt: None
 Atm. factor: None
 K Factor: 1.333
 RX Antenna - Type: OMNI
 Height: 1.0 mtrs AGL Gain: 0 dBd
Received Power Levels (base-to-mobile)

 > -93.0 dBmW
 < -93.0 dBmW

Minimum signal level: -93.0 dBmW

Site	Ant Elv AMSL (mtrs)	ERPd (dBW)	Ant. Type /Orient.	Coordinates
PNH1	239.0 929.0000 MHz	30.00	OM-H	N 41 40 58.0 W 72 13 2.0

- a - Calculated Service Contour
- b - 32 km Service Contour
- c - Calculated Interference Contour
- d - 80 km Interference Contour

KILOMETERS

 20 0 20 40

PAGNET
 S. WILLIMANTIC, CT

Study 5

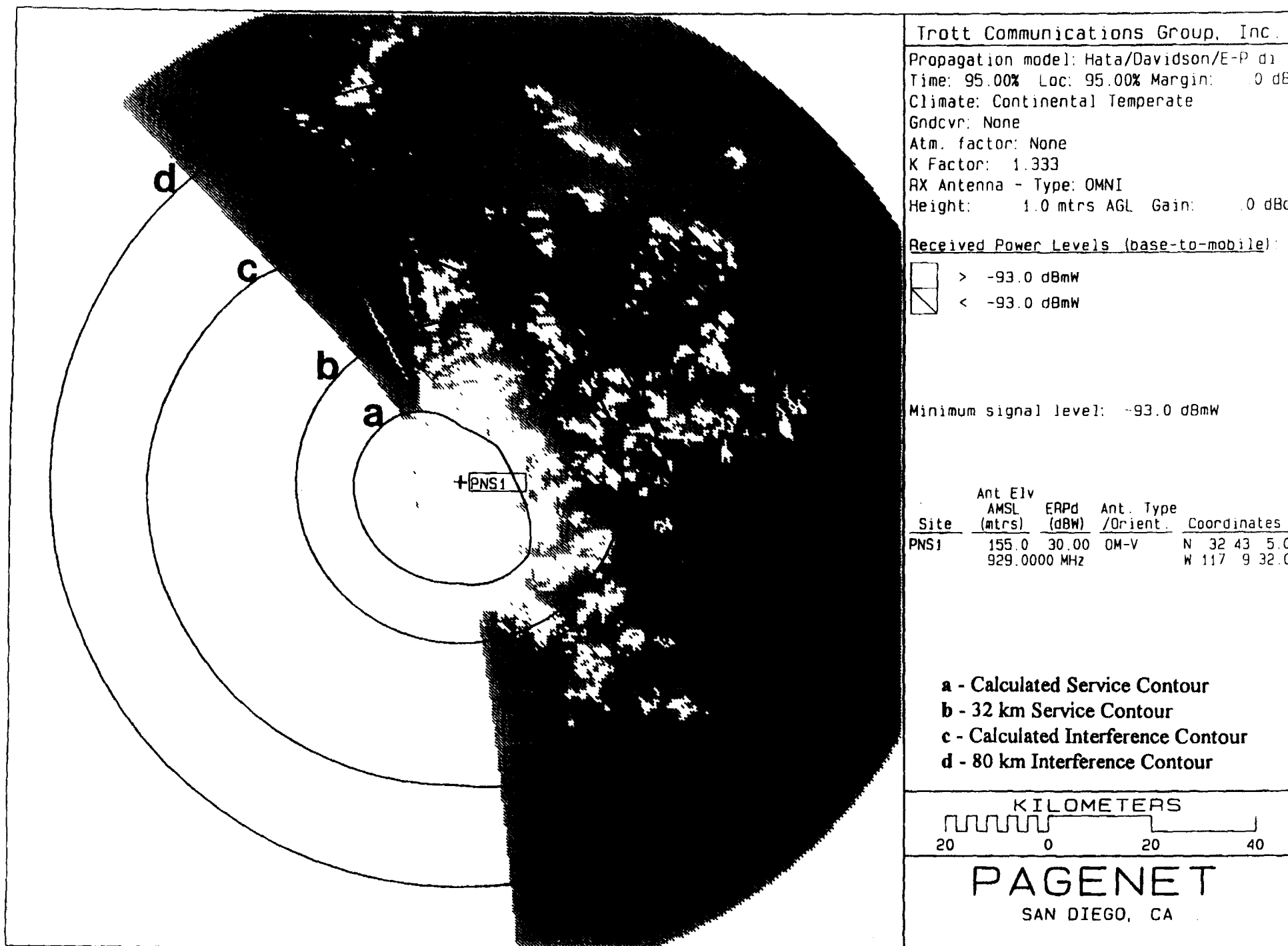


Exhibit 2

